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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/510,652	10/28/2004	Steven K. Libutti	230809	4377
36339 7590 02/12/2008 NATIONAL INSTITUTE OF HEALTH C/O NEEDLE & ROSENBERG, P.C. SUITE 1000 999 PEACHTREE STREET ATLANTA, GA 30309			EXAMINER SINGH, ANOOP KUMAR	
			ART UNIT 1632	PAPER NUMBER
			MAIL DATE 02/12/2008	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/510,652

Applicant(s)

LIBUTTI ET AL.

Examiner

ANOO P SINGH

Art Unit

1632

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 24 January 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☐ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☒ The Notice of Appeal was filed on 1/24/08. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 26-50.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☒ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

/Thaian N. Ton/
Primary Examiner, Art Unit 1632

Continuation of 3. NOTE: The proposed amendment to claim 26 raise new issues that require further search and consideration. Applicant has amended claim 26 to include new limitations "digitally quantifying the plurality of pixels" and "directly injecting into a vessel" that were not recited in previously rejected claims. In addition, claim 26 is further amended to require that the method steps be carried out in the shell prior to imaging a limitation that was required in earlier presented claims. The proposed amendments with new limitations changes the breadth of claim 26 and therefore would require new search and further consideration for art purposes.

Continuation of 11. does NOT place the application in condition for allowance because: The Examiner maintains the rejection of claims 26-50 for the reasons of record. Applicant arguments filed on 1/24/2008 have been fully considered but they are not fully persuasive. Applicants rebut the rejection of the claims under 35 USC 103(a) in the reply filed 1/24/2008. Applicant arguments filed on 01/24/2008 have been fully considered but they are not fully persuasive. Applicants arguments based on the proposed amendments are not persuasive, because the claim amendments have not been entered as they require new consideration and search.

Claims 26-34, 36-40 remain rejected under 35 U.S.C. 103(a) as being unpatentable over Brooks et al; (Science, 1994, 264, 570-571 IDS) and Robert et al (Cancer Res. 1992; 52(4): 924-30) and Kimel et al (SPIE, 1996, 2628, 69-76, IDS) for the reasons of record.

Claims 26-40 remain rejected under 35 U.S.C. 103(a) as being unpatentable over Brooks et al; (Science, 1994, 264, 570-571 IDS) and Rizzo et al (Microvascular Res, 1995, 49, 49-63, IDS) for the reasons of record.

Claims 41-50 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Brooks et al; (Methods in Molecular Biology, 129, 257-269, IDS), Kurz et al (Developmental Dynamics, 1995, 203, 174-186), Frasca et al (Oncogene, 2001: 20, 3845-3856) and Kinnman et al (Lab Invest. 2001; 81(12): 1709-16) for the reasons of record.

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